

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

FILED
DISTRICT COURT
27 MAY 2004
DISTRICT OF UTAH
BY: DEPT. CLERK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LEROY NIELSEN,

Defendant.

MEMORANDUM DECISION
AND ORDER

Case No. 2:03-CR-00407 W

This matter is before the court in order to resolve a dispute between the defendant, LeRoy Nielsen, and defense counsel, Jeanne T. Lund. The dispute arose over payment for services rendered by Ms. Lund during her representation of Mr. Nielsen. On April 5, 2004, Ms. Lund filed a motion to withdraw as Mr. Nielsen's counsel. On May 4, 2004, the court entered an order granting Ms. Lund's motion to withdraw.

Mr. Nielsen claims that Ms. Lund has been overpaid for the services she provided him during her brief representation. Ms. Lund not only denies that she was overpaid but further asserts that Mr. Nielsen owes her an additional \$6,780.

On April 19, 2004, during the course of Ms. Lund's motion to withdraw hearing, the court heard argument or received information on the subject of Ms. Lund's representation of Mr. Nielsen from the following: Mr. Nielsen; Ms. Lund; Wendy M. Lewis (former counsel for Mr. Nielsen); and Colleen K. Coebergh (counsel for the government). The court ordered a transcript of the hearing, and requested briefing from Ms. Lund and Mr. Nielsen regarding the subject of

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Ms. Lund's representation and fees. After thorough review and consideration of the information submitted by foregoing named persons, as well as consideration of the transcript of the April 19, 2004 hearing, the court enters the following memorandum decision and order.

DISCUSSION

Review of the court docket and file, documents submitted by Ms. Lund, documents submitted by Mr. Nielsen, as well as the transcript from the April 19, 2004 hearing, indicates that Ms. Lund was not retained to represent Mr. Nielsen until early February of 2004. More precisely, it was not until February 11, 2004 that Ms. Lund appeared before this court and announced that she had been retained to represent the defendant. Prior to Ms. Lund's February 11, 2004 appearance, Mr. Nielsen was represented by Wendy M. Lewis, Assistant Utah Federal Defender, who by Ms. Lund's own account was able and competent.¹ At the time Ms. Lund made her initial appearance on behalf of Mr. Nielsen the court made clear that if she were allowed to enter the case she would not be permitted to withdraw and a firm trial date was set by the court. Shortly thereafter, on April 5, 2004, Ms. Lund filed a motion seeking to withdraw as counsel for Mr. Nielsen. Ms. Lund claimed that disputes over payment had rendered the relationship with Mr. Nielsen unworkable.

¹According to court records, on June 11, 2003, Wendy M. Lewis, Assistant Utah Federal Defender, was appointed by the court to represent Mr. Nielsen. Ms. Lewis continued to represent Mr. Nielsen until February 11, 2004, when she was informed that as of that date that Ms. Lund had been retained. Ms. Lewis then requested leave to withdraw as counsel for Mr. Nielsen and this was granted. At the April 19, 2004 hearing and after the motion to withdraw of Ms. Lund was granted, Ms. Lewis and her colleague, Ms. Chelsea A. Koch, were appointed to represent Mr. Nielsen.

In order to justify her fees and to collect payment for services rendered up to the point of her withdrawal, Ms. Lund provided the court with a “Description of Services” for Mr. Nielsen. Review of that document reveals that Ms. Lund includes within those services several hours spent on Mr. Nielsen’s behalf which transpired prior to the time she was actually retained. Ms. Lund claims to have provided services to Mr. Nielsen as early as September 23, 2003, nearly five months before Ms. Lund entered her initial appearance. The court declines to consider any of the services allegedly provided to Mr. Nielsen during the time that Mr. Nielsen was being represented by other suitable counsel and prior to the time Ms. Lund was actually retained and appeared on his behalf.

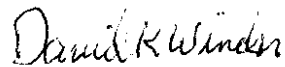
With regard to the services provided after February 11, 2004, although Ms. Lund purports to have spent numerous hours conducting research, reviewing defense files and meeting with Mr. Nielsen, it is difficult to see much if any benefit to Mr. Nielsen as a result of her services. The court notes that Ms. Lund failed to file any motions on Mr. Nielsen’s behalf, and the court further observes that a considerable amount of Ms. Lund’s time was actually spent attempting to secure or collect her fees. Moreover, after having been specifically informed by the court that if she were allowed to assume representation of Mr. Nielsen she would not be permitted to withdraw, less than three months later Ms. Lund filed a motion seeking to be released from representing Mr. Nielsen.

Based on disputed evidence, the court finds that from the time Ms. Lund was retained and entered her appearance on behalf of Mr. Nielsen until her withdrawal, the total amount paid by or

on behalf of Mr. Nielsen was \$3,220.² Given these facts, and for the reasons explained above, the court concludes that Ms. Lund is entitled to keep \$1,000 for her brief representation of Mr. Nielsen. Ms. Lund is therefore ordered to refund to Mr. Nielsen the amount of \$2,220 (\$3,220 minus the \$1,000 for her services) payable within thirty days.

DATED this 27th day of May, 2004

BY THE COURT:



David K. Winder
Senior District Court Judge

²The court finds that Ms. Lund received \$2,500 from Cory Olsen on behalf of Mr. Nielsen. (Mr. Olsen issued Ms. Lund a check for \$500 on February 4, 2004 and issued a second check for \$2000 on February 10, 2004, for a total of \$2,500). Ms. Lund also received \$220 on February 24, 2004 and received an additional \$500 on March 10, 2004. Accordingly, the court finds that Ms. Lund received a total of \$3,220.

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of May, 2004, I served copies of the foregoing by
United States mail, postage prepaid, and/or by inter-office delivery, addressed as follows:

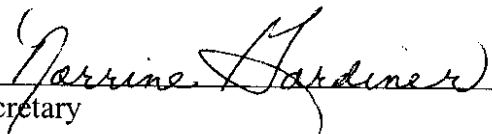
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Secretary

United States District Court
for the
District of Utah
June 1, 2004

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cr-00407

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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